

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0536

IN THE MATTER OF

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
DEUEL VOCATIONAL INSTITUTION
WASTEWATER TREATMENT FACILITY
SAN JOAQUIN COUNTY

This Administrative Civil Liability Complaint (Complaint) is issued to the California Department of Corrections and Rehabilitation (CDCR or Discharger) pursuant to California Water Code (Water Code) section 13323, which authorizes the Executive Officer to issue this Complaint, and Water Code section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint proposes administrative civil liability pursuant to Water Code sections 13268 and 13385. The allegations in this Complaint are based on violations of Cleanup and Abatement Order (CAO) R5-2015-0704 and Waste Discharge Requirements Order R5-2014-0014 (NPDES CA0078093).

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) alleges the following:

BACKGROUND

1. The Discharger owns and operates the Deuel Vocational Institution Wastewater Treatment Facility (Facility) a wastewater collection, treatment and disposal system, which provides sewerage service to the Deuel Vocational Institution, a California prison. Treated municipal wastewater is discharged into Deuel Drain, tributary to Paradise Cut and Old River, which are part of the Sacramento-San Joaquin Delta and waters of the United States.
2. In order to regulate discharges from the Facility, on 7 February 2014, the Central Valley Water Board adopted Waste Discharge Requirements (WDRs) Order R5-2014-0014, which contained new requirements and rescinded WDRs Order R5-2008-0164, except for enforcement purposes. On 9 October 2014, the Board amended the WDRs by adoption of Order R5-2014-0014-01, which allows for participation in the Delta Regional Monitoring Program. Otherwise, the amended WDRs contain the same requirements as WDRs Order R5-2014-0014.
3. On 30 March 2015, the Assistant Executive Officer issued Cleanup and Abatement Order (CAO) R5-2015-0704 to the Discharger for violations and threatened violations of the WDRs, including: chronic toxicity in the effluent, exceedance of the nitrate effluent limit, damage to the membrane bioreactor, use of expired chemical reagents, failure to develop standard operating procedures, lack of adequate staffing, poor housekeeping, and the potential for increased influent flows and lack of treatment capacity. These violations are likely occurring at the Facility due to 1) inadequate operation and maintenance of the Reverse Osmosis Groundwater Treatment Plant (RO Plant), which had been installed to treat groundwater from onsite supply wells to provide potable water to inmates and to reduce electrical conductivity in the influent to the wastewater treatment plant, and 2) inadequate operation and maintenance of the membrane bioreactor (MBR) at the Facility.
4. The CAO requires submittal of a number of reports which, if implemented, will bring the Discharger back into compliance with the WDRs and will allow continued, reliable operation of the Facility. The reports are described in detail in Attachment A to this Complaint.

**VIOLATIONS OF CAO R5-2015-0704:
FAILURE TO SUBMIT TECHNICAL REPORTS**

5. According to the Hereby Ordered section of the CAO, “... *technical reports shall contain the information and decisions required by the following paragraphs. If a report is submitted without the required information or decision, then the Discharger is in violation of this Order and subject to additional enforcement action.*”
6. The Discharger has a history of submitting late and incomplete technical and progress reports. Since the adoption of the CAO on 30 March 2015, the Discharger has been issued two Notices of Violations (NOVs) and multiple staff-enforcement emails regarding late and incomplete reports, as described below.
7. On 8 May 2015, Board staff issued a NOV for the non-submittal of three reports (*RO Plant Spare Parts Status Report*, *MBR Modules Replacement Time Schedule*, and the *First Quarter Progress Report*). The NOV informed the Discharger that the maximum liability as of 8 May 2015 for these delinquent reports was \$110,000. In addition, the NOV required the Discharger to submit these delinquent reports immediately to avoid further enforcement action.
8. On 11 May 2015, the Discharger responded submitted what it described as the *First Quarter Progress Report*. However, a review of the document shows that it does not contain the information required by the CAO and is therefore materially deficient. In addition, the Discharger stated that it had submitted the *RO Plant Spare Parts Status Report* and *MBR Modules Replacement Time Schedule* on 1 May, as required. Further review by Board staff found that although the *RO Plant Spare Parts Status Report* and *MBR Modules Replacement Time Schedule* had been submitted on time, these reports did not include all of the required information and therefore the Discharger did not comply with the CAO. The information which is missing is described in Attachment A to this Order.
9. On 30 June 2015, Board staff issued a NOV for delinquent technical reports, which included the *RO Plant Spare Parts Status Report*, *MBR Modules Replacement Time Schedule* and *O&M Manual and SOPs*¹. The NOV includes detailed explanations for why these technical reports are materially deficient and requested the Discharger to resubmit these reports forthwith. The Discharger was informed that the maximum liability as of 30 June 2015 for these delinquent reports was \$160,000. However, as of 1 May 2016, the Discharger has not submitted reports which contain the information required by the CAO.
10. On 4 September 2015, the Central Valley Water Board’s Assistant Executive Officer emailed the Discharger to express concerns regarding compliance with CAO R5-2015-0704 and the failure to resubmit the three technical reports listed in the above Finding. The email informed the Discharger that the maximum liability as of 4 September 2015 for these delinquent reports is over \$350,000. In addition, it stated that the Board is extremely concerned about the poor performance of the Facility and the numerous recent violations of the effluent limitations. On 4 September 2015, the Associate Warden responded by email and stated that the Facility’s Operations budget for FY 15-16 still had not been received, and that he would respond within a week with the status and options for moving forward. Board staff subsequently participated in a conference call with the Discharger to discuss the outstanding reports and what is required by the CAO.

¹ Submitted on 28 May 2015

11. The Discharger has submitted two reports which comply with the CAO: the *Time Schedule for Cleaning and Properly Maintaining Facility Grounds* and the *Third Party Selection Report*.
12. On 5 February 2016, Central Valley Board staff emailed the Discharger regarding the *Third and Fourth Quarter Progress Reports*. Board staff stated that these progress reports do not contain the information required by the CAO. Staff provided a detailed explanation as to what is to be submitted in each progress report, and requested the Discharger to resubmit these delinquent reports immediately. As of 1 May 2016, the Discharger has failed to respond.
13. Board staff met with the Discharger multiple times prior to issuance of the CAO, provided the Discharger with an opportunity to comment on the draft Order, and since the CAO's adoption, has spent considerable effort attempting to educate the Discharger so that it will comply. However, as of 1 May 2016, the Discharger continues to fail to comply with the CAO. The table below outlines the reporting violations.

Delinquent Monitoring Reports	Due Date	Received	Status	Days of Violation ¹
First Quarter 2015 Progress Report	4/30/15	5/11/15	Incomplete	366
RO Plant Spare Parts Status Report	5/1/15	5/1/15	Incomplete	365
MBR Modules Replacement Time Schedule	5/1/15	5/1/15	Incomplete	365
O&M Manual and SOPs	6/1/15	5/28/15	Incomplete	334
Second Quarter 2015 Progress Report	7/30/15	7/19/15	Incomplete	275
Third Quarter 2015 Progress Report	10/30/15	1/27/15	89 Days Late Incomplete	183
Fourth Quarter 2015 Progress Report	1/30/16	1/27/15	Incomplete	91
Total Days				1,979

¹As of 1 May 2016.

VIOLATIONS OF WDRS ORDER R5-2014-0014

14. The WDRs allow the discharge of treated wastewater to surface waters, under the condition that the Discharger complies with the effluent limitations and other limitations prescribed by the Board. Failure to comply with the WDRs subjects the Discharger to mandatory minimum penalties as well as discretionary penalties.
15. The purpose of the CAO was to compel the Discharger to take actions to upgrade its wastewater treatment facility such that it would continuously comply with its WDRs. However, between adoption of the CAO on 30 March 2015, and 31 December 2015, the Discharger violated the effluent limit for total coliform organisms 28 times, violated the effluent limit for nitrate plus nitrite effluent limit four times, and violated the effluent limit for ammonia three times. On 28 March 2016, the Assistant Executive Officer issued Administrative Civil Liability Complaint (ACLC) R5-2016-0523 to the Discharger. The ACLC assessed \$111,000 in mandatory minimum penalties for effluent limit violations that occurred between 1 April 2014 and 31 December 2015. The

Discharger has paid the penalty.

16. This Order assesses discretionary penalties for those effluent limit violations that occurred between 1 January 2016 and 30 April 2016, as shown on Attachment B to this Order. There were five total coliform violations and two nitrate plus nitrite violations. During the time in which the effluent limit was violated, over 2.8 million gallons of wastewater was discharged to the Deuel Drain. It is noted that the Discharger also exceeded the chronic toxicity limit for eight of the eleven toxicity tests that it conducted since issuance of the CAO. While these violations are considered as part of the penalty calculation (Attachment A), this Order does not specifically assess liability for the toxicity limit violations.
17. On 12 January 2016, Board staff issued a NOV for violating the final effluent limitations for ammonia, nitrate plus nitrite, and total coliform organisms between August 2015 and November 2015. Board staff requested a response summarizing actions the Discharger would immediately implement to properly treat its wastewater and comply with the NPDES permit until the damaged membrane bioreactor modules are replaced. The Discharger has not provided a specific response to this NOV; however, the Discharger did respond on 9 March 2016 as described below.
18. On 18 February 2016, Board staff issued a NOV for violating the final effluent limitations for total coliform organisms during December 2015. Board staff requested that the Discharger describe the preventative measures that would be implemented to prevent similar violations until the membrane bioreactors are replaced. On 9 March 2016, the Discharger responded to the February NOV and stated (a) on 6 August 2015 a contractor made changes to the "maintenance clean program", (b) in late October 2015, two of the UV trains were re-built, (c) on 26 January 2016 an additional UV train became operational, and (d) a purchase order was issued on 22 February 2016 to replace the membrane biofilters.
19. Standard Provision I.D of the WDRs Standard Provision I.D of WDRs Order R5-2014-0014-01 states in part: "The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of this Order . . . This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by a Discharger only when necessary to achieve compliance with the conditions of this Order." The Discharger has delayed upgrades and maintenance to the wastewater treatment plant thereby further causing pollution to the Deuel Drain. In particular, the CAO required that the Discharger replace the MBR modules by 31 March 2016. However, as of 1 May 2016, the modules have not been replaced.

REGULATORY CONSIDERATIONS

20. As described above, the Discharger has failed to submit technical and progress reports as required by CAO R5-2015-0704. The Discharger has also violated its WDRs Order R5-2014-0014 by discharging waste water in exceedance of permitted limits and by failing to properly operate and maintain its wastewater treatment facility.
21. The Central Valley Regional Water Board may impose administrative civil liabilities for violations of a discharger's WDR permit and/or applicable Board orders pursuant to the procedures described in Water Code section 13323. This Complaint alleges the Discharger violated WDRs Order R5-2014-0014 and CAO R5-2015-0704, and seeks the imposition of administrative civil liability in accordance with Water Code sections 13268 and 13385.

22. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board. Surface water drainage from the facility is the Sacramento San Joaquin Delta. The designated beneficial uses of the Sacramento San Joaquin Delta are municipal and domestic supply; agricultural supply; water contact recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; migration of aquatic organisms; spawning, reproduction and/or early development; wildlife habitat; and navigation.
23. Pursuant to Water Code section 13385, in determining the amount of civil liability, the regional board shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
24. Issuance of this Complaint to enforce Division 7, Chapter 5.5 of the Water Code is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, 15321, subdivision (a)(2) and all applicable law.

CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13268

25. Water Code section 13268, subdivision (a)(1) states: *Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267... is guilty of a misdemeanor, and may be liable civilly in accordance with subdivision (b).*
26. Water Code section 13268, subdivision (b)(1) states: *Civil liability may be administratively imposed by a regional board ...for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.*
27. CAO R5-2015-0704 requires that reports be submitted pursuant to Water Code section 13267. As outlined in Finding 13, the Discharger has failed to submit seven technical and progress reports that contained the information required by the CAO. As of 1 May 2016, the reports are a total of 1,979 days late.
28. **Maximum Civil Liability:** Per Water Code section 13268, subdivision (b)(1) the maximum administrative civil liability that may be assessed for not submitting the monitoring reports required by the CAO is **one million nine hundred seventy nine thousand dollars (\$1,979,000).**

CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13385

29. Water Code section 13385(a)(2) states that any person who violates a waste discharge requirement may be subject to civil liability.
30. Water Code section 13385(c) states, in relevant part:

(c) Civil liability may be imposed administratively by the state board or a regional board...
in an amount not to exceed the sum of both of the following:

- (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.
- (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
- (e) At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

31. **Maximum Civil Liability for Discharge to Surface Waters:** Per Water Code section 13385, civil liability administratively imposed by the Central Valley Water Board may not exceed \$10,000 per day of violation, plus \$10 per gallon for each gallon of waste discharged over 1,000 gallons. The discharge took place over 7 days, and therefore the maximum per-day penalty is \$70,000. A total of 2,876,049 gallons were discharged during the seven days of violation; of this amount, 2,869,049 gallons were discharged over 1,000 gallons per discharge event. The maximum per-gallon penalty is \$28,690,490. The maximum civil penalty is the sum of the per-day and per-gallon penalties, or \$28,760,490.
32. **Maximum Civil Liability for Failing to Comply with WDRs:** Per Water Code section 13385, civil liability administratively imposed by the Central Valley Water Board may not exceed \$10,000 per day of violation. The Discharger has failed to comply with Provision I.D of the WDRs. In particular, the Discharger has failed to comply with the CAO requirement that the MBR modules be replaced by 31 March 2016. As of 1 May 2016, the Discharger is in violation for 30 days, for a maximum liability of \$300,000.
33. **Minimum Civil Liability for All Violations:** Pursuant to the State Water Board's Enforcement Policy, liability must be assessed to recover at a minimum ten percent more than the economic benefit of noncompliance derived from the acts that constitute each violation. The minimum civil liability for all violations is estimated to be \$2,293,251.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

34. On 17 November 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13327 and 13385, subdivision (e). The entire Enforcement Policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11179.pdf.
35. The recommended administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, and Water Code sections 13268 and 13385, as explained in detail in Attachment A to this Complaint. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.

36. As described above, the maximum penalty for all three types of violations is \$31,039,490 and the minimum penalty is \$2,293,251. Based on consideration of the above facts, and after applying the penalty methodology, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of \$4,037,620. The specific factors considered in this penalty are detailed in Attachment A.
37. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's WDRs or CAO for which penalties have not yet been assessed or for violations that may subsequently occur.
38. On 14 February 2014, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters originating in the Central Valley Region. The 14 February 2014 Delegation of Authority also authorizes Andrew Altevogt to issue administrative civil liability complaints.

THE CALIFORNIA DEPARTMENT OF CORRECTION AND REHABILITATION IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an administrative civil liability in the amount of **four million thirty seven thousand six hundred twenty dollars (\$4,037,620)**. The amount of the proposed liability is based upon a review of the factors cited in Water Code section 13385, as well as the State Water Resources Control Board's 2010 Water Quality Enforcement Policy.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **13/14 October 2016**, unless the Discharger does one of the following by **12 August 2016**:
 - a) Waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board. In addition, submit payment for the proposed civil liability in the amount **four million thirty seven thousand six hundred twenty dollars (\$4,037,620)** to the State Water Board with a copy of the check to the Central Valley Water Board; or
 - b) Requests to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed. The Central Valley Water Board must agree to the postponement; or
 - c) Requests to delay the hearing by checking off the box next to Option 3 on the attached form, and returning it to the Board along with a letter describing the proposed length of delay and the issues to be discussed. The Central Valley Water Board must agree to the postponement.
4. If a hearing on this matter is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
5. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and

expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

Original Signed by
ANDREW ALTEVOGT, Assistant Executive Officer

22 July 2016
DATE

Attachment A: Penalty Calculation Methodology including Exhibit 1, Economic Benefit Analysis
Attachment B: Effluent Limit Violations

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the California Department of Corrections and Rehabilitations (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2016-0536 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

☐ **(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)**

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **four million thirty seven thousand six hundred twenty dollars (\$4,037,620)** by check that references "ACL Complaint R5-2016-0536" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Accounting Office, Attn: ACL Payment at PO Box 1888, Sacramento, California, 95812-1888 by **12 August 2016**. The waiver and a copy of the check must be submitted to the Central Valley Water Board at 11020 Sun Center Drive #200, Attn: Wendy Wyels, Rancho Cordova, California, 95670 by **12 August 2016**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

☐ **(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

☐ **(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)